IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

MFA.No. 1122 of 2001(C)

WCC.229/1996 OF COMMISSIONER FOR WOKMEN'S COMPENSATION, KANNUR
.....

APPELLANT/ 2ND OPPOSITE PARTY:

THE MANAGER, ORIENTAL INSURANCE CO. LTD.,
MARUTHI PLAZA, BALMATTA ROAD,
MANGALORE, REPRESENTED BY THE ASSISTANT MANAGER,
MOTOR THIRD PARTY CLAIMS CELL, REGIONAL OFFICE,
NORTH RAILWAY STATION ROAD,
ERNAKULAM, COCHIN - 682 018.

BY ADV. SRI.M.JACOB MURICKAN.

RESPONDENTS/ APPLICANT & 1ST OPPOSITE PARTY:
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1. **RATHNAKARA, S/O. BABU SAPHALLYA,**
   C/O. MONAPPA TAILOR, ANCHIKATTE HOUSE,
   UDYAWAR, P.O. MANJESHWAR, KASARAGOD.

2. **N. MOORTHY, S/O. R. NADESAN,**
   DOOR. NO. C. 139/10,
   MAHARAJA COMPLEX, RAO & RAO CIRCLE,
   MANGALORE.

BY ADV. SRI.A.P.CHANDRASEKHARAN,
SMT.PRABHA R.MENON,
SRI.KODOTH PUSHPARAJAN,
SRI.M.KRISHNA KUMAR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 7897/2001 IN M.F.A. NO. 1122/2001

DISMISSED

SD/- J.B.KOSHY, JUDGE.

24/10/2007. **SD/- K. HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1122 of 2001

Dated this the 24th day of October, 2007

Judgment

Koshy,J.

First respondent in this case sustained personal injuries in the course of employment. He filed an application for compensation. He was employed as a conductor-cum-cleaner in a bus. He claimed that his monthly income was Rs.2,500/- per month. The bus was insured by the appellant insurance company. He claimed Rs.2,00,000/- as compensation. Commissioner for Workmen's Compensation awarded Rs.1,06,257.60 with 12% interest from the date of accident. He deposed that he was working as a conductor as well as cleaner. He was issuing tickets. As a result of the accident, there was fracture to the left hand. Ext.A2 is the wound certificate issued by RW1. It is stated in the above certificate that there is restriction of movement of right hand by 25%. He deposed before the court as follows:

> "I have certified that the fracture united, clinical examination and Alimco manual I have depended for the assessment of disability. Even though the fracture is united there is same disability. It is comminuted fracture. There is a restriction of 25 degree. Restriction of movement is mentioned in the certificate which is stiffness. I have mentioned only the degree of restriction in Ext.A3 certificate. I have not mentioned the percentage of disability in the certificate. I can suggest the disability before the court. He has disability. I have not mentioned the disability on the whole body basis."

In cross-examination, he stated that disability of the whole body is 20%. He further stated that because of the injuries in his left hand, occupational disability is 100%. Commissioner assessed compensation at 40%. There is no evidence to the effect that he lost employment due to the accident. The injury was only a fracture to left hand which was well united also. Even though Commissioner is bound to assess the compensation on the basis of the loss of earning capacity assessed by the medical practitioner, in Ext.A2 wound certificate or in Ext.A3 disability certificate, loss of earning capacity was not mentioned. The medical officer cannot also assess the loss of earning capacity arbitrarily.

Section 4 (1) (c) (ii) and Explanation II of the Workmen's Compensation Act reads as follows:

> "(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;"
>
> xx xx xx xx xx
>
> Explanation II - In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;"

Therefore, the medical officer has to assess the loss of earning capacity considering the compensation provided for injuries under Schedule I of the Workmen's Compensation Act, 1923. From the injuries noted in the wound certificate, there cannot be even 25% loss of earning capacity. Ext.A3 disability certificate shows that there is 25% restriction in the movement of the hand. In any event, no compensation can be awarded for more than 25% disability. The Commissioner or the medical practitioner cannot assess the earning capacity arbitrarily without reference to Schedule I which

specifies the loss of earning capacity with respect to schedule injuries while fixing the loss of earning capacity due to non-schedule injuries. Therefore, in this case, at the maximum, compensation for 25% disability can be granted. At the time of accident, maximum amount that can be fixed as per the provisions of the Act as monthly income was Rs.2,000/-. Therefore, compensation payable will be Rs.2000 x $\frac{60 \times 25}{100 \quad 100}$ x 221.37 = Rs.66,411/-. The above amount will carry 12% interest from the date of accident (date when compensation fell due as decided by the Supreme Court in Pratap Narain Singh Deo v. Shrinivasa Sabata and another (AIR 1976 SC 222) and K.S.E.B. v. Valsala ((1999) 8 SCC 254) till the date of deposit. In this case, the amount was deposited on 31.7.2001 as a condition precedent in filing the appeal. Hence, interest is payable on the above amount from 23.10.1995 to 31.7.2001. Already an amount of Rs.25,000/- was allowed to be disbursed to the claimant. Balance amount due to him shall be disbursed by the Commissioner to the first respondent claimant forthwith

and excess amount deposited shall be refunded to the appellant insurance company.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. 1122 OF 2001

Judgment

Dated:24th October, 2007